IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Bail Appl..No. 3792 of 2007()

(C.R. NO. 33/2006 of JUDICIAL FIRST CLASS MAGISTRATE, MANNARKKAD)

PETITIONER/ACCUSED NO.2

P.C.SHAFEEQUE, S/O.KASIM, POTHUVACHOLA HOUSE, ARIYOOR, KUMARAMPUTHOOR P.O., MANNARKKAD.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA, THROUGH THE SUB INSPECTOR OF POLICE, MANNARKKAD POLICE STATION, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. S.U. NAZER, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3792 of 2007

Dated this the 21st day of June, 2007

ORDER

Application for anticipatory bail. Petitioner is the 2nd accused in a prosecution, inter alia, under Sections 326 and 302 read with 149 I.P.C. The alleged incident took place on 09.12.2000. The petitioner was arrested and released on bail. Later, the final report was filed and committal proceedings have been registered. The petitioner was not available for arrest. In these circumstances, he finds a warrant of arrest issued by the learned Magistrate chasing him. He is willing to surrender before the learned Magistrate. He prays that appropriate directions under Section 438 Cr.P.C may be issued in his favour. He apprehends that his application for bail may not be considered by the learned Magistrate in accordance with law, on merits and expeditiously. Appropriate directions under Section 438 or/and 482 Cr.P.C may be issued, it is prayed.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the

extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-